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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

JAVIER C. TORRES and CYNTHIA G. TORRES, husband and wife individually, as a marital community, and as parents and heirs of ANDREW A. TORRES, deceased, Plaintiffs, vs. GORDON TRUCKING INCORPORATED, an Oklahoma corporation; ROGER J. JOHNSON, an individual; and EDWIN E. HASKINS, an individual, Defendants.	Case No. CIV95-0460 S-MHW **AFFIDAVIT OF DR. GARY R. ALBRECHT, Ph.D.**

STATE OF NORTH CAROLINA)
) ss.
County of Forsyth)

GARY R. ALBRECHT Ph.D., being first duly sworn on oath, hereby deposes and says:

1. My name is Gary R. Albrecht, Ph.D. I submit this affidavit in support of Plaintiffs' Opposition to Defendants' Motion to Exclude Testimony Regarding Hedonic

Damages. I have agreed to submit this affidavit to help the court understand the concept and applicability of hedonic damages in personal injury litigation.

2. I received my Bachelor's Degree in Economics and Philosophy from Tulane University in 1974. I received my Master' Degree in Economics from Indiana University in 1978 and my Ph.D. in Economics from Indiana University in 1986. I am currently a consulting economist and an adjunct associate professor at Wake Forest University in Winston-Salem North Carolina. I have done a substantial amount of research on econometric modeling of state economic models in both Kansas and Indiana. I am currently active as a forensic economist and publish regularly in the field of forensic economics. Attached to this affidavit is a copy of my full curriculum vitae.

3. There is a consensus, although not unanimity, in the field of forensic economics that we can derive values for statistically average lives based on the scientific studies of the value of life reflected in "willingness to pay" literature. Like many other economists, I believe lost enjoyment of life damages in personal injury cases and wrongful death cases, including valuation of lost society and companionship, can be calculated with a reasonable degree of economic certainty.

4. Hedonic calculations simply capture the value of lost enjoyment of life of a statistically average person as established by market analysis. Such analysis provides general statistics not substantially different from life expectancy tables, unemployment rates, projected work-life tables or estimated future net discount rates. Use of statistical averages to calculate damages is a basic tool of forensic economics. As with all economic calculations, calculation of the lost value of life is subject to some theoretical attack.

5. Many estimations and calculations by economists cannot be replicated or validated like those in physical science areas, such as chemistry or medicine. By its nature, all economic analysis includes a human component subject to significant variability. For example, there is no retrospective test that would show that but for the injury suffered any particular injured child would have accomplished any specific level of education. Nonetheless, I know that economists are frequently asked to make assumptions regarding education to provide juries a basis for determining appropriate damage awards for injured children. Assumptions of this type and magnitude are regularly included in the calculations economists testify to in courtrooms.

6. I am familiar with the criticism that the willingness to pay studies do not incorporate people's lack of absolute freedom to choose jobs and that other motivations impact the amounts people accept for risky jobs. It is undoubtedly true that each statistical study in the willingness to pay area reflects the knowledge and limitations of the people involved in those studies. Recognizing that fact for each study does not invalidate the information provided to economists by the body of studies. Economists can and have evaluated the numerous studies of willingness to pay to determine why variances exist. For example, I am familiar with the article in *The Journal of Forensic Economics* in 1991, entitled "The Plausible Range of Value of Life - Red Herrings Among the Mackerel" by Ted R. Miller, Senior Research Economist at the Urban Institute in 1991. This article is a good example of an economist evaluating and adjusting studies to compensate for variables within those studies. Based on my knowledge of econometrics and statistics, I believe the Miller article is an economically proper analysis. This does not mean it is the only possible analysis. Nonetheless, I am unaware of any peer reviewed economic literature that disputes Miller's methodology.

7. There are many variables in economic calculations that require economists to select from a wide universe of data before making a calculation. For example, there are innumerable government and industry studies regarding potential interest rates. In some settings testifying economists will simply take an average of some historical data regarding those rates. This methodology is widely accepted in the field. No economist would testify that the interest rate he or she applied using this technique was perfectly accurate to determine a future loss at a particular point in the distant future. The economist could only testify that it was that professional's best estimation based on the empirical data reviewed. Similarly, when projecting the value of a business at some point in the future, an economist may attempt to determine the most appropriate interest rate to apply over a shorter time horizon. Making such selections is always subject to the criticism that the economist is simply eyeballing. This criticism ignores the fact that these economists are making professional judgments based on their knowledge of the economic data and theory.

8. I have addressed in the literature why the loss of a portion of the ability to enjoy ones life is incorporated in the market decisions that value the loss of one whole life. Because the calculation in the market is based on the whole loss as opposed to part of the loss, the willingness to pay studies provide a framework for determining lost value of life calculations. The willingness to pay studies evaluate the lost value of life in the marketplace, not in unusual or emotionally charged settings. The attacks on the theory that ignore the inherent valuation processes of the market and refer to rescues of trapped people or playing Russian Roulette miss the point of the scholarship and knowledge in this area. It is precisely because the market studies reflect day to day behavior that they provide an accurate model.

9. While intellectual differences exist among forensic economists regarding the calculation of hedonic damages, a substantial portion of such economists believe the willingness to pay literature provides an economically accurate basis from which the value society places on a statistically average person or relationship can be calculated. It is important for economists to understand the studies involved to insure the appropriate analysis.

10. I am familiar with the work of economist Stan V. Smith. I have read and reviewed his book *Economic/Hedonic Damages: A Practice Book for Plaintiff and Defense Attorneys.* That book sets forth an economically appropriate method of calculating lost value of life damages that falls well within the range of accepted standards governing how economists conduct their research and reach their conclusions. The conclusions and methodology of Stan Smith's approach more than meets the criteria of good economics.

Further your Affiant sayeth naught.

GARY R. ALBRECHT, Ph.D.

SUBSCRIBED AND SWORN TO before me this 19 day of February 1997.

Notary Public for North Carolina
Residing at Davidson County
Commission Expires 8-22-2001